IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2007

C O R A M :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

C.M.A. No.2993 of 2004 and C.M.P.No.16761 of 2004

The Commissioner of Central Excise,
Central Excise Commissionerate
No.1, Williams Road, Cantonment
Tiruchirapalli. .. Appellant

Vs

1. M/s.Maris Spinners Limited
   Kulithalai Road,
   Manaparai - 621 306
2. Customs, Excise and Service
   Tax Appellate Tribunal,
   Shastri Bhavan Annexure
   NO.26, Haddows Road,
   Chennai - 600 006. .. Respondents

Civil Miscellaneous Appeal filed against the Final Order No.464 of 2004 dated 30.04.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.P.Bhuwaneswaran,CGSC
For Respondents:Mr.B.Raviraja (R.1)

J U D G M E N T

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J)

This Appeal is filed against the Final Order No.464 of 2004 dated 30.04.2004 made by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. The question of law formulated for entertainment of the appeal are as follows:

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"1. Whether the Tribunal is correct in holding that the light fittings which were not covered under the definition of capital goods given under Rule 57 Q of erstwhile Central Excise Rules, 1944, and not sued for producing or process of ultimate manufacture of any Final products, are eligible capital goods for availing Modvat credit under Rule 57 Q of erstwhile Central Excise Rules, 1944?

2. Whether the Tribunal is correct in not construing the fiscal language in Rule 57Q of erstwhile Central Excise Rules, 1944 strictly?"

3. The first respondent herein is engaged in the manufacture of cotton yarn falling under heading No.52.05 of the Central Excise Tariff Act 1985. They availed Modvat credit on the goods "lighting fittings and parts thereof" falling under heading No.94.05 to the extent of Rs.47,994/- under rule 57Q of the Central Excise Rules, 1944. They have filed necessary declaration under Rule 57T on 23.2.2996. The capital goods credit was sought to be disallowed on the ground that the goods were ineligible capital goods under Rule 57Q. The original authority allowed the credit holding inter alia that the goods were industrial in nature and hence eligible for credit. Aggrieved by the said order, the Revenue moved the commissioner (Appeals), who by his order dated 29.7.2003 held in favour of the revenue. Aggrieved by the said order, the assessee filed appeal before the Customs, Excise and Service Tax Appellate Tribunal. The Tribunal by following the decisions of the Supreme Court in the case of JK COTTON SPINNING AND WEAVING MILLS CO.LTD., reported in 1997 (91) ELT 34 and also THE COMMISSIONER OF CENTRAL EXCISE, COIMBATORE VS. JAWAHAR MILLS LIMITED reported in 2001 (132) ELT 3 has held in favour of the assessee by allowing the appeal. The correctness of the said order is now put in issue before this Court.

4. As stated in the summation of facts, the respondent herein has availed the Modvat credit in respect of lighting fittings. Whether the availment of credit in respect of lighting fittings under Rule 57DQ of the Central Excise Rules is correct or not is the only question involved. The Supreme Court in the case of THE COMMISSIONER OF CENTRAL EXCISE, COIMBATORE VS. JAWAHAR MILLS LIMITED reported in 2001 (132) ELT 3 has held that having regard to the normal conditions prevailing in the industry, production of the finished goods would be difficult without the use of electrical equipment and the equipment should be regarded as intended for use in the manufacture of the goods. In the case of JAWAHAR MILLS referred above, the Supreme Court has held that the power cables and capacitors, control panels, cables distribution boards, switches and starters and air compressors, electrical wires and cables would qualify for the benefit as capital goods under Rule 57Q.

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5. When the Supreme Court has enunciated the law as aforesaid by bringing the "lighting fittings and cables" within the ambit of capital goods under Rule 57Q, we are of the view that the order of the Tribunal allowing the case in favour of the first respondent/assessee cannot be considered as illegal or irregular so as to interfere in this appeal and accordingly the questions of law raised are answered against the revenue and the appeal is dismissed. Consequently, the connected C.M.P. is also dismissed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Customs, Excise & Service Tax
Appellate Tribunal,South Zonal Bench
Shastri Bhawan Annexe
1 Floor, 26, Hadddows Road
Chennai 6.

2.The Commissioner of Central Excise,
Central Excise,Commissionerate
No.1, Williams Road,
Cantonment
Tiruchirapalli.

+1 cc to Mr.B.Ravi Raja, Advocate Sr.No.65948.

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